

**United States Department of Labor
Employees' Compensation Appeals Board**

K.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 16-0425
Issued: April 21, 2016**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 4, 2016 appellant, through counsel, filed a timely appeal from an August 7, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision of January 13, 2014 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this claim.

ISSUE

The issue is whether OWCP properly denied appellant's November 19, 2014 reconsideration request under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 1, 2013 appellant, then a 57-year-old postmaster, filed an occupational disease claim (Form CA-2) alleging that she developed tenosynovitis as a result of her employment. She

¹ 5 U.S.C. § 8101 *et seq.*

first became aware of her condition and realized it resulted from her employment on September 9, 2011. Appellant described the various surgeries she had undergone and the treatment she received. Her supervisor indicated on the claim form that appellant stopped work on May 19, 2012.²

Appellant received treatment from Dr. Gregory Cush, a Board-certified orthopedic surgeon, for complaints of gradually worsening, persistent shoulder and wrist pain. In progress notes dated January 31 to May 31, 2012, Dr. Cush reviewed appellant's medical history and provided findings on physical examination.

In a June 3, 2012 report, Dr. Timothy P. Duffey, an osteopath who specializes in orthopedic surgery, examined appellant for complaints of continued right shoulder pain. He reviewed her diagnostic reports and recommended that she modify her activities.

Appellant was examined by Dr. Chuck Kerr, an osteopath specializing in orthopedic hand surgery, who indicated in a June 12, 2012 report that he was providing a consultation for appellant following carpal tunnel release surgery. Dr. Kerr reviewed appellant's medical history and diagnostic reports. He noted his examination findings and diagnosed multifactorial numbness, arthritis, and flexor carpi radialis tendinitis. Dr. Kerr recommended that appellant undergo a magnetic resonance imaging (MRI) scan examination.

Dr. Desmond Stutzman, an osteopath who specializes in orthopedic surgery, also treated appellant. In letters dated October 17, 2012 to May 24, 2013, he informed Dr. Duffey that appellant was status post tenovagotomy of the right flexor carpi radialis. Dr. Stutzman recommended that appellant avoid any lifting, pushing, or pulling that caused pain. He reviewed appellant's history and provided examination findings. Dr. Stutzman diagnosed right carpal tunnel syndrome, status post carpal tunnel release, right wrist pain with evidence of flexor carpi radialis tenosynovitis, and right thumb early degenerative arthritis. He recommended that appellant continue with physical therapy. In an April 23, 2013 return to work note, Dr. Stutzman indicated that appellant had a follow-up appointment on May 1, 2013. He also provided duty status reports (Form CA-17) which indicated that appellant could work with restrictions.

In a March 7, 2013 letter, Michael B. Alter, a human resource management specialist at the employing establishment, controverted appellant's claim. He reported that Dr. Stutzman's report did not indicate that appellant's right flexor carpi radialis was related to her employment. Mr. Alter further noted that appellant had not worked since November 29, 2011.

By letter dated March 18, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she provide a detailed description of her employment duties and answer specific questions regarding her employment. OWCP also requested that she provide a narrative medical report from her physician, which included his opinion based on medical rationale as to how her work activities caused or contributed to her medical condition. Appellant was afforded 30 days to submit this evidence.

² Appellant has previously accepted occupational disease claim (File No. xxxxxx726) for right carpal tunnel syndrome and a traumatic injury claim (File No. xxxxxx228) for an October 13, 2011 employment injury.

On April 1, 2013 OWCP received appellant's response to its March 18, 2013 development letter. Appellant described her employment activities and the medical treatment she had received for her alleged medical condition, including carpal tunnel release surgery on May 13, 2011. She also noted her hobbies and explained the development of her right hand and wrist condition.

Appellant provided attending physician's reports (Forms CA-20) dated May 2 and 24, 2013 by Dr. Robert J. Nowinski, an osteopath who specializes in orthopedic surgery. Dr. Nowinski noted a date of injury of May 11, 2007 and provided his examination findings and treatment. He indicated by check mark "yes" that appellant's condition was caused or aggravated by the employment activity of constantly repetitive daily work. Dr. Nowinski noted that appellant was unable to work from April 18 to July 18, 2013.

In a decision dated June 25, 2013, OWCP accepted appellant's employment duties as a postmaster and her diagnosis of right carpal tunnel syndrome and wrist tenosynovitis. However, it denied her claim as she had not submitted sufficient medical evidence to establish that her medical conditions were causally related to factors of her employment.

On July 1, 2013 OWCP received appellant's request, through counsel, for a telephone hearing before an OWCP hearing representative, which was held on November 25, 2013. The hearing representative described appellant's previously accepted claim for bilateral carpal tunnel syndrome and appellant explained that she filed a new claim because her doctor informed her that her current condition was a new injury. Appellant indicated that she stopped work on January 11, 2012 and was in a leave-without-pay status until June 2013 when she retired due to disability. She described her repetitive duties as a postmaster, the pain and discomfort she experienced in her upper extremities, and she reviewed the medical treatment that she received.

Dr. Stutzman provided additional notes dated June 21 and August 7, 2013 which noted that appellant was status post flexor carpi radialis debridement. He related that appellant had an incident where she had a fall, caught herself, and reinjured her wrist. Dr. Stutzman recommended that she modify her activities. He also provided a July 29, 2013 attending physician's report.

Appellant submitted a June 21, 2013 decision of the Social Security Administration (SSA) which approved her request for disability retirement. She also provided a June 11, 2013 letter from the Office of Personnel Management (OPM), which noted that she was disabled from her position as a postmaster due to carpal tunnel syndrome.

In a November 14, 2013 letter to appellant's counsel, Dr. Duffey related that appellant sustained an acute onset lifting injury on May 11, 2007, which persisted and increased in severity over the years. He reviewed the medical treatment that she received and described the May 11, 2007 employment incident. Dr. Duffey opined that appellant had established a causal relationship.

By decision dated January 13, 2014, an OWCP hearing representative affirmed the June 25, 2013 decision.

By letter received on November 19, 2014, appellant, through counsel, requested reconsideration and submitted additional evidence. In reports dated November 6, 2013 and May 21, 2014, Dr. Stutzman noted appellant's complaints of continued pain in her flexor carpi radialis and related that she previously undergone tenovagotomy of her flexor carpi radialis. Upon examination, he observed some swelling and pain with palpation, pain with resisted wrist flexion, and pain with palpation of flexor carpi radialis. Dr. Stutzman reported that the radial, ulnar, and median nerves were intact to both sensory and motor function. He noted no instability at the wrist, flexor carpi radialis, and distal radioulnar joint. Carpal compression test and Phalen's maneuver were positive. Dr. Stutzman reviewed appellant's history and noted that x-rays of the right wrist and thumb showed evidence of mild degenerative changes. He diagnosed left carpal tunnel syndrome, left ulnar nerve neuropathy at the elbow, and continued pain in the right flexor carpi radialis status post tenovagotomy. Appellant resubmitted Dr. Stutzman's notes dated June 21 and August 7, 2013.

Appellant provided an attending physician's report dated February 11, 2012 from Dr. Stutzman. Dr. Stutzman noted a date of injury dated September 9, 2011 and a history of injury of carpal tunnel release surgery in 2011 with continuous repetitive work. He checked a box "yes" that appellant's condition was caused or aggravated by an employment activity of constant, repetitive work. Dr. Stutzman indicated that appellant was totally disabled beginning January 31, 2013 and partially disabled beginning March 31, 2013.

By decision dated August 7, 2015, OWCP denied further merit review of appellant's claim. It determined that the evidence submitted was repetitive and substantially similar to evidence previously submitted.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.³ OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise her right through a request to the district office.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

³ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁵ *Id.* at § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must also be received within one year of the date of the OWCP decision for which review is sought.⁶ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by OWCP, or submitted relevant and pertinent new evidence not previously considered by OWCP.

Appellant alleged that she sustained a right wrist and hand condition as a result of her repetitive employment duties as a postmaster. In decisions dated June 25, 2013 and January 13, 2014, OWCP denied her claim as she had not submitted sufficient medical evidence to establish that her medical conditions were causally related to factors of her employment. On November 19, 2014 OWCP received appellant's request, through counsel, for reconsideration.

Along with her reconsideration request, appellant submitted various medical reports by Dr. Stutzman including his notes dated June 21 and August 7, 2013. These reports are insufficient to warrant further merit review because these reports were previously considered by OWCP. The Board has found that submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁹

Appellant also submitted reports dated November 6, 2013 and May 21, 2014 and a February 11, 2014 attending physician's report from Dr. Stutzman, which were not previously considered by OWCP. Although these medical reports were not previously considered by OWCP, the Board finds that they are insufficient to warrant further merit review of appellant's case as they are substantially similar to medical reports previously reviewed. The Board has found that evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.¹⁰ Accordingly, OWCP properly denied further merit review of appellant's claim.

As found, appellant did not satisfy any of the criteria to warrant a merit review by OWCP. Because she did not meet any of the necessary requirements, she is not entitled to

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

¹⁰ *James W. Scott*, 55 ECAB 606 (2004); *Denis M. Dupor*, 51 ECAB 482 (2000).

further merit review. Accordingly, the Board finds that OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On appeal, counsel alleges that OWCP's August 7, 2015 decision was contrary to fact and law.

CONCLUSION

The Board finds that OWCP properly denied appellant's November 19, 2014 request for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board